IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EDELSON PC, an Illinois professional corporation, *Plaintiff,* *v.* THOMAS GIRARDI, an individual, GIRARDI KEESE, a California general partnership, ERIKA GIRARDI a/k/a ERIKA JAYNE, an individual, EJ GLOBAL LLC, a California limited liability company, GIRARDI FINANCIAL, INC., a Nevada corporation, DAVID LIRA, an individual, KEITH GRIFFIN, an individual, JOHNSTON HUTCHINSON & LIRA LLP, a California limited liability partnership, ROBERT FINNERTY, an individual, ABIR COHEN TREYZON SALO, LLP, a California limited liability partnership, CALIFORNIA ATTORNEY LENDING II, INC., a New York corporation, STILLWELL MADISON, LLC, a Delaware limited liability company, and JOHN DOE 1-10, *Defendants.*	Case No.: 1:20-cv-07115 Hon. Matthew F. Kennelly

DEFENDANT, KEITH GRIFFIN'S, REPLY MEMORANDUM IN SUPPORT OF HIS OPPOSED MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(2)

I.

INTRODUCTION

Edelson PC adds nothings new to the personal jurisdiction discussion. Instead, Edelson attempts to modify the causation standard necessary for a personal jurisdiction analysis. *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-36 is supportive of Mr. Griffin's position. There is no evidence that Edelson's loss of attorney fees arise from Griffin's

two trips to Chicago to attend a mediation on the *Lion Air* cases. Edelson has no response to the fact that its fee dispute with Girardi (which centers on Girardi's conduct in California) is wholly unrelated to the claims of the *Lion Air* plaintiffs – who are clients it no longer represents. Mr. Griffin's two trips to Chicago and the engagement letter created in California do not amount to sufficient contacts to justify personal jurisdiction over Mr. Griffin in Illinois.[1] Edelson's half-hearted plea that the dispute with Griffin reaches beyond the fee contract into tort is not well-taken. There is absolutely no evidence that Griffin conspired with Girardi to cheat Edelson out of their associate counsel fees. In fact, Edelson's lawyers had more conversations with Girardi about its alleged fees than anyone, including Griffin.

II.

EDELSON INCORRECTLY ARGUES THE HOLDING OF *CALDER V. JONES*.

Edelson pulls a line from *Calder v. Jones*, 465 US 783, 790 (1984) to suggest that employee status does not insulate Mr. Griffin from jurisdiction. *See* Edelson Opposition Brief, p. 20. However, the **fiduciary shield doctrine** – which developed out of *Calder* - precludes a finding of personal jurisdiction over Mr. Griffin. The fiduciary shield doctrine "denies personal jurisdiction over an individual whose presence and activity in the state in which the suit is brought were solely on behalf of his employer or other principal." *Rice v. Nova Biomedical Corp.,* 38 F.3d 909, 912 (7th Cir. 1994); *see also ISI Int'l, Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 550 (7th Cir. 2001) ("Illinois employs the fiduciary-shield doctrine, under which a person who enters the state solely as fiduciary for another may not be sued in Illinois."). Where

[1] Edelson has referenced several times the alleged fee agreement was signed by Griffin, but has failed to attach the agreement to the operative complaint or any subsequent pleading in the case. This omission is noteworthy as Edelson, as the complaining party, with the burden here, surely has a copy of the alleged agreement and is hesitant to publish it. Mr. Griffin, as a former employee, does not have access to this document since it is in the possession of Girardi Keese law firm.

an individual defendant's conduct "was a product of, and was motivated by, his employment situation and not his personal interests ... it would be unfair to use this conduct to assert personal jurisdiction over him as an individual." *United Fin. Mortg. Corp. v. Bayshores Funding Corp.,* 245 F.Supp. 2d 884, 894 (N.D. Ill. 2002) (quoting *Rollins,* 141 Ill.2d at 280 (internal quotation marks omitted).

The undisputed evidence before the Court is that Mr. Griffin was a W-2 employee for Girardi Keese. Mr. Griffin did not travel to Chicago for a mediation on the *Lion Air* case out of his own personal interest or for any independent financial gain.[2] He was an employee lawyer that was sent to attend a mediation on a case for which his employer *Girardi Keese* had been retained. There are no allegations in the complaint that suggest that Mr. Griffin masterminded or even participated in a scheme to defraud Edelson out of its associate counsel fees.

The competent evidence is to the contrary. Edelson's complaint states that Thomas Girardi, the sole owner of Girardi Keese, "who exercises exclusive and total control of all bank accounts for GK", embezzled settlement funds meant for *Lion Air* clients and failed to pay Edelson its co-counsel fees. (*See*, Doc. No. 1, ¶ 63). All of the property at issue in the case, namely the settlement funds, was delivered to Girardi Keese in California. (*See*, Doc. No. 1, ¶ 115). All of the tortious activity complained of, namely Girardi Keese's failure to pay co-counsel fees, took place exclusively in California. (*See*, Doc. No. 1, ¶ 118). The operative complaint does not, and cannot, state any facts that confer personal jurisdiction over Defendant Griffin in the State of Illinois.

[2] In addition to referencing Mr. Griffin's attendance at two mediations on the *Lion Air* cases, Edelson submits pro hac vice applications that were created and submitted by Mr. Scharg at the Edelson firm. Mr. Griffin did not appear in the Illinois state court proceedings nor did he ever make an appearance in the federal court case before Judge Durkin once the cases were removed.

III.

THE DECISION IN *FORD V. MONTANA EIGHTH JUDICIAL DISTRICT COURT* DOES NOT ALTER THE CAUSATION ANALYSIS IN PERSONAL JURISDICTION CASES.

Edelson harkens back to the *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368 for the misbelief that the causation standard in personal jurisdiction has been rewritten. This is an incorrect reading of the case law. In line with years of precedent, the Supreme Court in *Ford Motor* found that "when a company cultivates a market for a product in the forum state and the product malfunctions there", specific jurisdiction attaches. *Ford Motor* at 2-3. In fact, Ford conceded that it had "purposefully availed itself of conducting activities in both States". *See id.* at 2.

Ford was attempting to expand the long-stated precedent of specific jurisdiction by advocating that personal jurisdiction could only attach to the company if it had designed, manufactured, or sold the subject vehicle in the State where the accident occurred. *See id.* at 1. The Court rejected the argument as an improper limitation on specific jurisdiction. Essentially, Ford was attempting to twist the *Bristol-Myers* decision, to suggest that personal jurisdiction does not exist if the offending product is sold outside the forum state, even though the company may regularly sell similar products in the forum state. *See id* at 16. Justice Kagan wrote that "such a suggestion misses the point of our decision [in *BMS*]. We found jurisdiction improper in *Bristol-Myers* because the forum State, and the defendant's activities there, lacked any connection to the plaintiffs' claims. See 582 U.S., at ___ (slip op., at 8) ("What is needed-and what is missing here-is a connection between the forum and the specific claims at issue")." *Id.*

The Court again reinforced the clear requirement of a connection between the specific claims at issue, namely the breach of attorney fee split agreements, and the forum.

The facts of *Ford Motor* do not mesh with the present action. Griffin has not conceded any aspect of purposeful availment, nor is there any evidence whatsoever that Griffin cultivated any type of market for services in the forum state. In *Ford Motor*, the company "systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States…" *Id. at 3.* The same cannot be said of Defendant Griffin's contacts with Edelson and the forum State of Illinois.

IV.

THE FACTS OF *SHINDLER V. LYON* ARE ENTIRELY DISTINGUISHABLE FROM THE PRESENT MATTER.

Edelson's reliance on *Schindler v. Lyon*, 2013 WL 4544263 (SDNY 2013), is totally misplaced because of the fiduciary shield doctrine. In *Schindler*, a California company hired local counsel in New York to pursue litigation. The company, Haggar International, routinely paid New York attorney Schindler to perform legal services. After Mr. Haggar passed away, the general counsel for the company explicitly agreed to be responsible for Schindler's legal bills. *See id.* at *1. Lyon, the general counsel, eventually stopped paying the bills and Schindler sued. The court conducted the routine purposeful availment analysis and found asserting personal jurisdiction over Lyon to be appropriate. A similar result would be expected if Thomas Girardi or Girardi Keese was making this motion. Edelson entered into a fee sharing contract with Girardi Keese, not employee attorney Keith Griffin. (*See*, Doc. No. 1, ¶ 102) Edelson has not alleged that Mr. Griffin agreed to personally guarantee their associate counsel fees, nor could they legitimately so allege. Here, again, the fiduciary shield doctrine provides that an employee,

like Mr. Griffin, can not be subject to personal jurisdiction if he is simply performing an errand for his employer, which is exactly what happened. Mr. Griffin's presence in Illinois was solely related to his duties for his former employer Girardi Keese.

CONCLUSION

There is no dispute that the legal fee contract at issue was created and signed in California, that the subject of the dispute, namely the settlement funds, were delivered to California and any fee dispute related communications by Defendant Griffin took place outside of Illinois. Forum-state injury is not enough. *Tamburo*, 601 F.3d at 706. "Bad financial consequences to a firm in Illinois…are not the same as a tortious injury occurring to the firm in Illinois." *John Crane Inc.* at *37-*38 (citing *Macey & Aleman v.* Simmons, No. 10-C-6646, 2012 U.S. Dist. LEXIS 19828, 2012 WL 527526 at *4 (N.D. Ill. Feb. 15, 2012).

For the foregoing reasons, Defendant Griffin respectfully requests that the Court dismiss Plaintiff's complaint as to Defendant Griffin for lack of personal jurisdiction.

Respectfully submitted,

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